

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL DALE WILLIAMS ,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 3:21-cv-05542-RSM-BAT

**REPORT AND
RECOMMENDATION**

Before the Court is a request for federal habeas relief under 28 U.S.C. § 2241. Dkts. 1, 8. Because the habeas petition is unclear, the Court ordered Petitioner on September 16, 2021 to file a single amended habeas petition so the Court could better understand the state judgment Petitioner challenges and his specific grounds for relief. Dkt. 9. Petitioner was directed to file the amended habeas petition no later than October 6, 2021 and was advised the failure to do so may result in a dismissal of this matter. *Id.* Plaintiff has not filed an amended habeas petition, or any other pleading and the matter is thus ripe for review.

Under Rule 4 of the Rules Governing § 2254 cases, the Court is required to perform a preliminary review of a habeas petition. The Court should dismiss a habeas petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4 also applies to

1 habeas petitions brought under § 2241. *See* Rule 1(b) of the Rules Governing Section 2254 cases
2 (“The district court may apply any and all of these rules to a habeas corpus petition not covered”
3 by 28 U.S.C. § 2254.). Having reviewed the petition submitted in this case and taking judicial
4 notice of other actions Petitioner has filed in this Court, the Court recommends this matter be
5 dismissed on the grounds the federal petition was filed outside the one-year statute of limitations
6 and is time-barred, and because Petitioner has not presented his habeas claims to the highest state
7 court, and the matter is thus unexhausted.

8 Although Petitioner proceeds pro se, leave to amend should not be granted because
9 amendment would be futile. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991); *FDIC*
10 *v. Conner*, 20 F.3d 1376, 1385 (5th Cir. 1994); *Shermoen v. United States*, 982 F.2d 1312, 1319
11 (9th Cir. 1992) (Leave to amend may be denied if the proposed amendment is futile or would be
12 subject to dismissal).

13 BACKGROUND

14 On July 28, 2021, Petitioner filed a petition for writ of habeas corpus using a form 28
15 U.S.C § 2241 petition and without paying the filing fee or applying to proceed *in forma pauperis*
16 (IFP). Dkt. 1. On September 13, 2021, Petitioner submitted an application to proceed IFP; the
17 Court granted the application, and the petition was docketed. Dkts. 7-8. On September 16, 2021,
18 the Court ordered Petitioner to file an amended habeas petition by October 6, 2021, to clarify the
19 judgment Petitioner challenges and the exact nature of his claims. Dkt. 9.

20 In the order directing Petitioner to file an amended petition, the Court noted the present
21 action is brought under § 2241, which is not the proper vehicle to challenge a state conviction
22 and sentence. A challenge to a state conviction and sentence should be brought under § 2254. To
23 help the Court understand what criminal convictions and sentences were at issue, the Court

1 directed Petitioner to clarify the specific convictions that he was challenging. The Court issued
2 this order because the § 2241 petition listed Pierce County case numbers 14-1-01441-6 described
3 as "Escape 2d degree Community Custody Violation Escape, and 14-1-00226-4 described as
4 "Attempted to unlawfully possess controlled substance." From the face of the habeas petition, it
5 was unclear whether these are the convictions that Petitioner challenges or whether he was also
6 challenging Plaintiff's four other criminal convictions between 2001 and 2017 that are noted in
7 the petition.

8 The Court also requested Petitioner to set forth the grounds for relief with sufficient detail
9 so the Court could understand the nature of the claim and the basis for the claim. The habeas
10 petition mentioned a "DOSA" sentence and avers "past release date." The habeas petition
11 indicates a wrongfully served sentence, "calculation wrong," and due process is violated because
12 a timely release has not been granted. The Court directed. Petitioner to provide more facts
13 detailing the allegations and the federal constitutional violation that Petitioner was alleging.

14 The habeas petition also alleges relief should be granted under "Blake – vs ST. Ruling."
15 The Court indicated to Petitioner that it assumes Petitioner is referring to *State v. Blake*, 197
16 Wn.2d 170 (2021) which held Washington State's strict liability drug possession statute
17 criminalizes unintentional and unknowing possession of controlled substances and is
18 unconstitutional. The petition avers the attempted possession of controlled substances and escape
19 convictions are "related." However, as the petition provided no facts regarding how or why the
20 two convictions are related, the Court directed Petitioner to present facts in support in his
21 amended habeas petition.

22 Because Petitioner has not filed an amended petition that clarifies his habeas claims, the
23 Court takes judicial notice Petitioner has filed other actions in this Court that upon examination

1 help flesh out his habeas claims. On July 28, 2021, Petitioner submitted a proposed § 1983 civil
2 rights complaint in *Williams v. Stock*, 3:21-cv-05538-JLR-DWC. The complaint refers to the
3 same criminal convictions challenged in the present habeas action: 14-1-01441-6 and 14-1-
4 00226-4. *See* case number 21-5538-JLR, Dkt. 1 at 4-5. The civil rights complaint alleges
5 Petitioner received a DOSA sentence and is unlawfully imprisoned under numbers 14-1-01441-
6 6, and 14-1-00226-4. The latter cause was dismissed under *State v Blake*, and Petitioner contends
7 that he is now past his release date, and wrongfully sentenced. The complaint contends that
8 between 2017 and the present, Petitioner has filed motions in the trial court under Criminal Rule
9 7.8 requesting the trial court correct his sentence and resentence him. Because no relief has been
10 granted, the complaint names the following trial-level defendants: Kevin Stock, Pierce County
11 Prosecuting Attorney filing clerk; Superior Court Judge McCartheney; and defense counsel Mary
12 Martin.

13 From the allegations raised in the civil rights complaint that Petitioner filed in *Williams v.*
14 *Stock*, 3:21-cv-05538-JLR-DWC, it appears the gist of Petitioner's present request for habeas
15 relief in this case is the state trial court erred in imposing sentence in the above 2014 case
16 numbers and this court should direct the trial court to resentence or release Petitioner.

17 DISCUSSION

18 The factual allegations in the present habeas petition and in Plaintiff's civil rights
19 complaint indicate there are several barriers preventing the Court from addressing the merits of
20 his habeas claims. First, § 2241 habeas relief, is unavailable in this case. Petitioner is a state
21 prisoner, and 28 U.S.C. § 2254 is the exclusive avenue for a state court prisoner to challenge the
22 constitutionality of his detention, even when the petition only challenges the execution of the
23 sentence and not the underlying conviction itself. *White v. Lambert*, 370 F.3d 1002, 1005 (9th

1 Cir. 2004) (adopting the majority view that distinguishes between a *federal* prisoner’s ability to
2 resort to § 2241 to attack the execution of a sentence and the structural differences in the habeas
3 statutes that make a state prisoner’s resort to § 2241 improper to challenge the execution of a
4 state sentence). Here, Petitioner contends the trial court erred at sentencing. This is a direct
5 challenge to his judgment and sentence and thus his request for habeas relief must be brought
6 under § 2254.

7 Second, construing the petition as one brought under § 2254, Petitioner may pursue
8 federal habeas under 28 U.S.C. § 2254 relief only after he has exhausted state judicial remedies.
9 *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). The exhaustion of state court remedies is a
10 prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1)(A).¹
11 *See Rose v. Lundy*, 455 U.S. 509 (1982). The exhaustion doctrine is based on a policy of federal
12 and state comity that recognizes state courts must be afforded the initial opportunity to correct
13 alleged constitutional deprivations. *See Picard v. Connor*, 404 U.S. 270, 275 (1971). A petitioner
14 can satisfy the exhaustion requirement by providing the highest state court with a full and fair
15 opportunity to consider all claims before presenting them to the federal court. *Id.* at 276.

16 Thus, Petitioner must first fully and fairly present the grounds for relief contained in his
17 habeas petition to the Washington Court of Appeals and Washington Supreme Court. The habeas
18 petition indicates Petitioner has send letters to the Pierce County Superior Court and the
19 Department of Corrections requesting a correction of his sentence. The petition thus
20 affirmatively avers Petitioner has not presented his habeas claims to the state court of appeals
21
22

23 ¹ This section states that “An application for a writ of habeas corpus on behalf of a person in custody to the judgement of a State court shall not be granted unless it appears that —(A) the applicant has exhausted the remedies available in the courts of the State.”

1 and state supreme court. The claims contained in his federal petition are consequently
2 unexhausted.

3 A federal court must dismiss a habeas petition if all claims are unexhausted. *Coleman v.*
4 *Thompson*, 501 U.S. 722, 731 (1991) (“This Court has long held that a state prisoner’s habeas
5 petition should be dismissed if the prisoner has not exhausted state remedies as to any of his
6 federal claims.”). Petitioner avers he has only presented his grounds for relief to the state trial
7 court; his federal petition is unexhausted and should be dismissed. In short, the Court is without
8 jurisdiction to consider federal habeas claims that have not been exhausted in the state courts.
9 *See* 28 U.S.C. § 2254(b)(1).

10 And third, Petitioner's request for federal habeas relief appears to be time barred. Federal
11 habeas corpus petitions filed by persons imprisoned under a state court judgment are subject to a
12 one-year statute of limitations. *See* 28 U.S.C. § 2244(d)(1). Under 28 U.S.C. § 2244(d)(1)(A),
13 “[t]he limitation period shall run from . . . the date on which the judgment became final by the
14 conclusion of direct review or the expiration of the time for seeking such review . . .”

15 Additionally, “[t]he time during which a properly filed application for State post-conviction or
16 other collateral review with respect to the pertinent judgment or claim is pending shall not be
17 counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(2)
18 (emphasis added).

19 For purposes of 28 U.S.C. § 2244(d)(1)(A), direct review generally concludes and the
20 judgment becomes final either upon the expiration of the time for filing a petition for writ of
21 certiorari with the Supreme Court, or when the Court rules on a timely filed petition for
22 certiorari. *Bowen v. Roe*, 188 F.3d 1157, 1158-59 (9th Cir. 1999). When there is no direct review
23 or the direct review process terminates prior to reaching the state’s highest court, however, the

1 judgment becomes final on an earlier date. *Gonzalez v. Thaler*, 565 U.S. 134 (2012); *Wixom v.*
2 *Washington*, 264 F.3d 894 (9th Cir. 2001). If the intermediate appellate court affirms the
3 judgment and sentence on direct appeal, and the petitioner does not timely seek review by the
4 state supreme court, the direct review process concludes upon expiration of time for seeking
5 review by the state supreme court and the judgment becomes final on that date. *Gonzalez*, at 150.

6 In Washington State, a criminal defendant must file a notice of appeal within 30 days
7 after entry of the decision which the defendant wants reviewed. *See* Rule of Appellate Procedure
8 5.2. Petitioner seeks federal habeas relief from state criminal judgments with case numbers
9 starting with 14, indicating the judgments relate to criminal charges filed in 2014. There is no
10 indication Petitioner has filed a direct appeal of the sentences he contests or challenged the
11 sentences through a personal restraint petition. Petitioner in his complaint filed in *Williams v.*
12 *Stock*, 21-5538-JLR indicates he has challenged the sentences by sending letters to the state trial
13 court in 2017, 2019 and 2021. The gaps between the original sentence in 2014 or 2015 and the
14 first letter to the trial court indicates a lapse of two years. The federal habeas statute of
15 limitations would thus have run during that time and expired even before 2017 when Petitioner
16 first sent letters to the state trial courts. Additionally, there are two-year gaps between
17 Petitioner's letters to the trial court in 2017, 2019 and 2021. The federal habeas statute of
18 limitations would have run and expired during the two-year gaps between each of those time
19 periods, which further bolster the conclusion the present habeas petition is barred by the statute
20 of limitations, untimely and should be dismissed.

21 In sum, because it appears Petitioner has never presented the present habeas claims to the
22 highest state court, and also filed the petition outside of the statute of limitations, the Court
23 recommends the petition be dismissed with prejudice.

1 **CERTIFICATE OF APPEALABILITY**

2 A prisoner seeking post-conviction relief under § 2254 may appeal a district court's
 3 dismissal of the petition only after obtaining a COA from a district or circuit judge. A COA may
 4 be issued only where a petitioner has made "a substantial showing of the denial of a
 5 constitutional right." *See* 28 U.S.C. § 2253(c)(3). A prisoner satisfies this standard "by
 6 demonstrating that jurists of reason could disagree with the district court's resolution of his
 7 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
 8 encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

9 Under this standard, the Court finds no reasonable jurist would disagree this habeas
 10 petition is unexhausted and untimely. The Court should therefore not issue a COA. Petitioner
 11 should address whether a COA should issue in his written objections, if any, to this Report and
 12 Recommendation.

13 **OBJECTIONS AND APPEAL**

14 This Report and Recommendation is not an appealable order. Therefore, a notice of
 15 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
 16 assigned District Judge enters a judgment in the case.

17 Objections, however, may be filed no later than **October 27, 2021**. The Clerk should
 18 note the matter for **November 5, 2021**, as ready for the District Judge's consideration. The
 19 failure to timely object may affect the right to appeal.

20 DATED this 13th day of October 2021.

21 
 22 _____
 23 BRIAN A. TSUCHIDA
 United States Magistrate Judge